

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

IN RE:)	
)	
INTEGRATED HEALING TECHNOLOGIES,)	
LLC,)	Case No: 3:18-bk-04526
)	Chapter 7
)	Judge Mashburn
Debtor.)	

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: December 26, 2018
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: January 15,
2019, 9:00 a.m. Courtroom 1, U.S. Bankruptcy Court, Customs House, 701
Broadway, Nashville, TN

NOTICE OF MOTION TO ASSUME EXECUTORY CONTRACTS WITH
NOVABAY PHARMACEUTICALS, INC. PURSUANT TO 11 U.S.C. §365(d)(1)

John C. McLemore, Trustee, has asked the Court for the following:

Permission of the Court to assume certain executory contracts between the Debtor and NovaBay Pharmaceuticals, Inc.

YOUR RIGHTS MAY BE AFFECTED. If you do not want the Court to grant the attached motion, or if you want the Court to consider your views on the motion, then on or before December 26, 2018, you or your attorney must:

1. File with the Court your response or objection explaining your position.
PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTION YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT: <https://ecf.tnmb.uscourts.gov>.

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: U.S. Bankruptcy Court, 701 Broadway, 1st Floor, Nashville, Tennessee (Monday – Friday, 8:00 a.m. – 4:00 p.m.).

2. **Your response must state that the deadline for filing responses is December 26, 2018, the date of the scheduled hearing is January 15, 2019, and the motion to which you are responding is the *Motion to Assume Executory Contracts with NovaBay Pharmaceuticals, Inc. Pursuant to 11 U.S.C. § 365(d)(1)*.**

3. You must serve your response or objection by electronic service through the Electronic Filing system described above. You must also mail a copy of your response or objection to:

John C. McLemore
2000 Richard Jones Rd.
Suite 250
Nashville, TN 37215

United States Trustee
701 Broadway, Customs House Suite 318
Nashville, TN 37203

Phillip G. Young, Jr.
Thompson Burton PLLC
One Franklin Park
6100 Tower Circle, Suite 200
Franklin, TN 37067

If a timely response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. ***THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.*** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing the case on the Court's website at www.tnmb.uscourts.gov.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated this 4th day of December, 2018.

Respectfully submitted,

/s/ Phillip G. Young, Jr.
Phillip G. Young, Jr.
Thompson Burton PLLC
One Franklin Park
6100 Tower Circle, Suite 200
Franklin, TN 37067
(615) 465-6008 (phone)
phillip@thompsonburton.com

Counsel to Trustee

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
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**MOTION TO ASSUME EXECUTORY CONTRACTS WITH NOVABAY
PHARMACEUTICALS, INC. PURSUANT TO 11 U.S.C. §365(d)(1)**

John C. McLemore, Chapter 7 Trustee herein (the “Trustee”) files this *Motion to Assume Executory Contracts with NovaBay Pharmaceuticals, Inc. Pursuant to 11 U.S.C. §365(d)(1)* (the “Motion”) seeking to assume certain agreements between the Debtor and NovaBay Pharmaceuticals, Inc., and in support thereof shows this Court as follows:

BACKGROUND

1. On July 9, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief, thereby commencing this case under Chapter 7, Title 11, United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Middle District of Tennessee (the “Court”).

2. The Trustee was duly appointed as Trustee in this Chapter 7 bankruptcy case, has been duly qualified, and is now serving in said capacity.

3. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Court has the requisite authority to grant the relief requested herein pursuant to 11 U.S.C. § 365(d)(1).

4. The Debtor’s primary business was the production of a product known as PhaseOne, a fast-acting skin and wound cleanser that penetrates and disrupts biofilm,

killing bacteria and fungi as well as neutralizing resulting toxins. The Debtor's inventory includes a large supply of PhaseOne product, and there is significant demand for PhaseOne from physicians, other medical professionals, and potential bulk purchasers.

5. The Debtor is a party to a Private Label Agreement with NovaBay Pharmaceuticals, Inc. dated October 24, 2012 (the "Private Label Agreement"), Amendments to the Private Label Agreement dated July 20, 2013 and October 2015 (the "Amendments"), and an Exclusive License Agreement with NovaBay Pharmaceuticals, Inc. dated November 15, 2017 (the "License Agreement") which appears to have value to at least one potential purchaser of the Debtor's assets. The Private Label Agreement, Amendments and License Agreement shall be referred to, collectively, as the "NovaBay Agreements."

6. The Trustee is in the process of marketing the Debtor's assets for sale and has received an offer from at least one party that is conditioned upon the assumption of the NovaBay Agreements. Therefore, the NovaBay Agreements are valuable to this estate.

7. The Debtor is not in default under any the terms of any of the NovaBay Agreements, the NovaBay Agreements have not expired, and there is no arrearage under any of the NovaBay Agreements that must be cured.

RELIEF REQUESTED

8. By this Motion, the Debtor requests entry of an order, pursuant to Bankruptcy Code §365 and Bankruptcy Rules 6004, 6006 and 9014 authorizing the assumption of the NovaBay Agreements by the Debtor.

ARGUMENT

9. Section 365 of the Bankruptcy Code provides that a debtor or trustee, “subject to the court’s approval, may assume or reject an executory contract or unexpired lease.” 11 U.S.C. § 365(a).

10. The Trustee, in the exercise of his sound business judgment, has determined that the assumption of the NovaBay Agreements is in the best interests of this bankruptcy estate, its creditors and all parties in interest.

11. Section 365(b) of the Bankruptcy Code provides that the Trustee may assume the NovaBay Agreements so long as all defaults (other than nonmonetary defaults incapable of being cured) are cured and the monetary damages suffered by the other party as a result of the defaults are paid. *See* 11 U.S.C. § 365(b)(1)(A) & (B). In this case, the Debtor has not defaulted under the terms of the NovaBay Agreements so no cure is necessary.

12. The Trustee is further required to provide adequate assurance of future performance as a condition precedent to the assumption. 11 U.S.C. § 365(b)(1)(C). The NovaBay Agreements consist of a non-exclusive license to sell PhaseOne, and a private labeling agreement allowing the Debtor (and now the Trustee) certain exclusive rights to sell the product under the name PhaseOne. None of the NovaBay Agreements require the Trustee to sell a certain number of inventory items or to compensate NovaBay if no product is sold. As such, there is little chance that the Trustee would breach the NovaBay Agreements in the future.

13. The Trustee’s assumption of the NovaBay Agreements is in the best interest of this estate, its creditors, and all parties in interest. It represents a valid exercise

of the Trustee's business judgment, and future performance under the NovaBay Agreements is virtually assured. As such, this Motion should be approved in all respects.

WHEREFORE, the Trustee respectfully requests entry of an order (i) granting the relief requested herein, and (ii) granting the Trustee such other and further relief as the Court deems just and proper.

Dated: December 4, 2018

Respectfully Submitted,

/s/ Phillip G. Young, Jr.
Phillip G. Young, Jr.
Thompson Burton PLLC
One Franklin Park
6100 Tower Circle, Suite 200
Franklin, TN 37067
Tel: 615-465-6008
phillip@thompsonburton.com

Counsel to Trustee

PROPOSED

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**ORDER GRANTING MOTION TO ASSUME
EXECUTORY CONTRACTS WITH
NOVABAY PHARMACEUTICALS, INC. PURSUANT TO 11 U.S.C. §365(D)(1)**

Upon consideration of the notice and motion of John C. McLemore, Trustee (the “Trustee”), to assume certain executor contracts with NovaBay Pharmaceuticals, Inc. in the above-styled matter;

And it appearing to the Court that relief sought by the Trustee is necessary and in the best interest of the estate and its creditors; It is hereby;

ORDERED that the Motion is GRANTED in all respects and the Trustee is deemed to have assumed (i) a Private Label Agreement between the Debtor and NovaBay Pharmaceuticals, Inc. dated October 24, 2012 (the “Private Label Agreement), (ii) Amendments to the Private Label Agreement dated July 20, 2013 and October 2015 (the “Amendments”), and an Exclusive License Agreement between the Debtor and NovaBay Pharmaceuticals, Inc. dated November 15, 2017 (the “License Agreement”) (the Private Label Agreement, Amendments, and License Agreement, collectively, the “NovaBay Agreements”); and

IT IS FURTHER ORDERED that, since the Debtor was not in default under any of the NovaBay agreements, no cure payment is required of the Trustee.

This Order was signed and entered electronically as indicated at the top of the first page

APPROVED FOR ENTRY:

/s/ Phillip G. Young, Jr.
Phillip G. Young, Jr.
Thompson Burton PLLC
One Franklin Park
6100 Tower Circle, Suite 200
Franklin, TN 37067
Tel: 615-465-6008
phillip@thompsonburton.com

Counsel to Trustee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the preceding Motion to Assume Executory Contracts with NovaBay Pharmaceuticals, Inc. Pursuant to 11 U.S.C. §365(d)(1) has been served this 4th day of December, 2018 via the Court's ECF system and upon the following parties by email and/or U.S. First Class mail:

Megan Seliber – United States Trustee's Office
By Email – Megan.Seliber@usdoj.gov

Justin Hall – General Counsel for NovaBay Pharmaceutical, Inc.
By Email – jhall@novabay.com

Gary Ferguson
9233 Old Smyrna Road
Brentwood, TN 37027

FirstBank
211 Commerce Street, Suite 300
Nashville, TN 37201

Five Star Venture Funding
2002 Tyne Blvd.
Nashville, TN 37215

Fred Goad
917 Stuart Lane
Brentwood, TN 37027

Graymar Investors
411 Great Circle Rd.
Nashville, TN 37228

Robert Lipman
411 Great Circle Rd.
Nashville, TN 37228

Keith Mullins
301 Plus Park Blvd., Ste. 500
Nashville, TN 37217

Linda Rebrovick
5202 Close Cir.
Nashville, TN 37205

Albert Rodewald
4814 Byrd Lane
College Grove, TN 37046

Timothy J. Patton Trust
2100 Londonderry
Ann Arbor, MI 48104

/s/ Phillip G. Young, Jr.
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Counsel to Trustee